

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county order denying their
4 application for a conditional use permit for three
5 additional dwellings on a parcel zoned Woodland Resource
6 (WR).

7 **FACTS**

8 The subject parcel is 80 acres in size. There is one
9 dwelling on the parcel, in which petitioners reside. The
10 parcel is forested and has slopes of 12 to 80 percent.
11 Surrounding parcels are zoned WR or Open Space Reserve
12 (OSR). Access is from Zemke Road, a 15 to 20 foot wide
13 granite surfaced county road which terminates about 1/2 mile
14 from the subject parcel. From there, access to the subject
15 parcel is via a 12 to 20 foot wide "natural rock" surfaced
16 private road which crosses an adjoining land owner's
17 property.¹ Several other dwellings have access from Zemke
18 Road. Zemke Road and the private access road have been used
19 for logging operations on the subject parcel and other
20 parcels in the area.

21 Petitioners applied for a conditional use permit to
22 place three additional dwellings on the subject parcel. The
23 additional dwellings are proposed to be the residences of

¹Whether petitioners have a right to use the access road for more than one dwelling is disputed by the owner of the land which the access road crosses.

1 other members of petitioners' family. The three additional
2 dwellings, together with the existing dwelling, are proposed
3 to be clustered on a ridgetop. After a public hearing, the
4 county hearings officer issued an order denying the
5 application. This appeal followed.

6 **FIRST ASSIGNMENT OF ERROR**

7 "Jackson County's decision concerning JCLDO
8 212.035(2) is not supported by substantial
9 evidence [in] the Record * * *."

10 "Additional dwellings" are a conditional use in the WR
11 zone.² Jackson County Land Development Ordinance (JCLDO)
12 212.030(12). JCLDO 212.035(2) establishes the following
13 approval standard for conditional uses in the WR zone:

14 "[T]he use will not interfere with forest
15 management or harvesting practices."

16 Petitioners argue the county's conclusion that they
17 failed to demonstrate compliance with JCLDO 212.035(2) is
18 not supported by substantial evidence in the whole record.
19 Petitioners describe evidence in the record which they
20 contend the county "overlooked."³ The evidence described by
21 petitioners includes that the residents of the proposed
22 additional dwellings (1) have great interest in carrying out
23 an intensified forest management plan for the subject

²The "first single family dwelling placed on a parcel at least ten acres in size" is a permitted use in the WR zone under JCLDO 212.020(17).

³Petitioners do not, however, provide citations to where in the record the evidence they describe is located.

1 parcel, "especially if they can live on the tree farm;"
2 (2) will be situated and equipped to report wildfire
3 sightings to the fire district; and (3) will share the cost
4 and labor of maintaining the private access road,
5 benefitting forest management of the subject and adjoining
6 properties. Petition for Review 7-8. Petitioners argue
7 that adjoining property owners have benefitted from
8 petitioners' past maintenance of Zemke Road and the access
9 road.

10 The county concedes petitioners presented plans for
11 intensified forest management of the subject parcel, but
12 argues petitioners failed to address the impact of the
13 proposed dwellings on the management or harvesting of
14 adjacent forest properties, including the use of the access
15 road for such activities. According to the county,
16 petitioners did not carry their burden of proving that their
17 proposal will not interfere with forest management or
18 harvesting practices.

19 In challenging the county's determination of
20 noncompliance with JCLDO 212.025(2) on evidentiary grounds,
21 petitioners bear a heavy burden. In order to overturn, on
22 evidentiary grounds, a local government's determination that
23 an applicable approval standard is not met, it is not
24 sufficient for petitioners to show there is substantial
25 evidence in the record to support their position. Rather,
26 the "evidence must be such that a reasonable trier of fact

1 could only say petitioners' evidence should be believed."
2 Morley v. Marion County, 16 Or LUBA 385, 393 (1988); McCoy
3 v. Marion County, 16 Or LUBA 284, 286 (1987); Weyerhauser v.
4 Lane County, 7 Or LUBA 42, 46 (1982). In other words,
5 petitioners must demonstrate that they sustained their
6 burden of proof of compliance with the applicable standard
7 as a matter of law. Jurgenson v. Union County Court, 42
8 Or App 505, 600 P2d 1241 (1979); Consolidated Rock Products
9 v. Clackamas County, 17 Or LUBA 609, 619 (1989).

10 With regard to use of the access road and Zemke Road
11 for forest management and harvesting activities, the
12 challenged decision states:

13 "One adjacent owner * * * testified he was
14 concerned over the condition and capacity of the
15 access road, and 'potential negative impacts on
16 our adjoining property.' * * * The Hearings
17 Officer is unable to determine from the evidence
18 what other lands require use of the access road
19 for hauling timber, whether logging truck traffic
20 could cross the subject property in the vicinity
21 of the [proposed] dwellings, or whether the
22 traffic produced by the [proposed] homes would
23 interfere with logging truck traffic produced on
24 nearby lands that use the same road network.
25 * * *

26 " * * * * *

27 "On this state of the record the Hearings Officer
28 is unable to conclude that the proposed homes will
29 not interfere with forest management or harvesting
30 practices." Record 11.

31 In the above quoted findings, the hearings officer
32 determined he could not find compliance with
33 JCLDO 212.035(2) because of a lack of evidence in the record

1 on the nature and extent of the use of these roads for
2 forest management and harvesting and the impacts of the
3 proposed dwellings on the forest use of these roads. We
4 agree with the county that these issues are relevant to
5 determining compliance with JCLDO 212.035(2).⁴ No party
6 cites any evidence in the record on these issues.
7 Petitioners, therefore, fail to demonstrate compliance with
8 JCLDO 212.035(2) as a matter of law.

9 The first assignment of error is denied.

10 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

11 Petitioners' second and third assignments of error
12 challenge the county's determinations of noncompliance with
13 JCLDO 212.035(3) and 260.040(2), two additional conditional
14 use permit approval standards. However, a local
15 government's denial of a development application will be
16 sustained if the local government's determination that any
17 one approval standard is not satisfied is sustained. McCaw
18 Communications, Inc. v. Polk County, ___ Or LUBA ___ (LUBA
19 No. 88-083, February 25, 1991), slip op 6; Forest Park
20 Estate v. Multnomah County, ___ Or LUBA ___ (LUBA No.
21 90-070, December 5, 1990), slip op 32 n 21; Van Mere v. City
22 of Tualatin, 16 Or LUBA 671, 687 n 2 (1988); Weyerhauser v.
23 Lane County, supra. Accordingly, because we sustain the

⁴We do not understand petitioners to dispute that Zemke Road and the access road have been used for logging trucks and other forest management practices on the subject parcel and other properties adjoining these roads.

1 county's determination of noncompliance with
2 JCLDO 212.035(2), supra, we do not consider petitioners'
3 second and third assignments of error.

4 The county's decision is affirmed.